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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121129661-3591-03]

RIN 0648-BC81

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery and Northeast Multispecies Fishery; Framework Adjustment 24 and Framework Adjustment 49; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendment.

SUMMARY: This action contains corrections and clarifications to the final rule implemented through Joint Framework Adjustment 24 to the Scallop Fishery Management Plan and Framework Adjustment 49 to the Northeast Multispecies Fishery Management Plan (Joint Framework 24/49), which published in the Federal Register on May 9, 2013. Following publication, NMFS identified certain provisions of the implementing regulations for Joint Framework 24/49 that needed correcting or clarification. Specifically, this correcting amendment makes corrections pertaining to the scallop fishery's default 2014 fishing year days-at-sea allocation for full-time vessels so that the allocation in the regulations is as intended by Joint Framework 24/49 (i.e., currently this allocation is greater than specified through the preambles to the proposed and final rules). In addition, this amendment makes corrections to the observer call-in requirements for scallop limited access general category individual fishing quota

vessels when fishing in open areas so that vessel owners and operators are clear on when they are required to call into the industry-funded observer program.

DATES: Effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, 978-281-9244; fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

On May 9, 2013, the final rule for Joint Framework 24/49 published in the Federal Register (78 FR 27088). The primary purpose of Joint Framework 24/49, developed by the New England Fishery Management Council (Council), was to set specifications for the scallop fishery, including days-at-sea (DAS), individual fishing quota (IFQ), and sea scallop access area trip allocations for fishing year (FY) 2013 and FY 2014 (default allocations). This action also made other adjustments to the Scallop FMP, including revisions to the industry-funded observer program for limited access general category (LAGC) IFQ vessels. This action was a joint framework with the Northeast Multispecies Fishery Management Plan (FMP) (i.e., Framework 49) because it adjusted the Georges Bank scallop access area seasonal closure schedules, which changed exemptions to areas closed to fishing specified in the Northeast Multispecies FMP.

Need for Correction

After publication of the final rule implementing Joint Framework 24/49, NMFS identified certain provisions that needed correcting or clarification. This rule makes these corrections and clarifications.

Correction

This action revises the table at § 648.53(b)(4) to correctly reference the FY 2014 DAS allocation for full-time vessels. Although the preambles in both the proposed and final rules correctly state the FY 2014 DAS allocations outlined in Joint Framework 24/49, the table in the final rule inadvertently included a higher full-time vessel DAS allocation for FY 2014 (i.e., 26 DAS instead of 23 DAS).

This action also revises the regulatory text at § 648.11(g) and the definition for scallop open areas at § 648.2 to clarify the industry-funded observer program call-in requirements for scallop LAGC IFQ vessels when fishing in open areas. Joint Framework 24/49 broadened the industry-funded observer program to include LAGC IFQ open area trips (previously, the program only applied to access area trips for this portion of the scallop industry). However, Joint Framework 24/49 inadvertently implemented ambiguous regulatory language that did not fully clarify that this broadening of the industry-funded observer program did not include vessels fishing in the Northern Gulf of Maine (NGOM) management area (i.e., the NGOM should not be considered part of scallop open areas). The Council designated the NGOM as a distinct management area through Amendment 11 to the Scallop FMP (73 FR 20090; April 14, 2008). Very few IFQ vessels fish in the NGOM management area, but when they do, they must fish under the regulations set for NGOM-permitted vessels. NGOM-permitted vessels are not part of the industry-funded observer program and NMFS covers the costs for these observed trips. This action clarifies the intent of both Joint Framework 24/49 and Amendment 11 by stating that the NGOM is not part of the scallop open areas, and, as such, that LAGC IFQ vessels fishing in the NGOM are not subject to the call-in requirements for the industry-funded observer program.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for public comment for this action because any delay of this action would be unnecessary and contrary to the public interest. This correcting amendment includes revisions that reflect the measures detailed in the preamble of the proposed rule for Joint Framework 24/49, for which the opportunity for public comment was already given. The revision to the full-time vessel DAS allocation table, while it reduces the DAS, was correctly described in the preamble to the proposed and final rule. The revision is therefore one that could have been anticipated. Such a reduction is needed in order to ensure that the DAS allocations specified at the start of FY 2014 will not be set at a level that could result in overharvest of the scallop resource. The Council is currently developing the formal FY 2014 specifications through Framework 25, which, if approved, would be implemented by May 2014 (i.e., 2 months after the start of FY 2014). The default FY 2014 specifications set through Joint Framework 24/49 are intended to allow for open area fishing at the start of FY 2014, but not at a level that would exceed the final Framework 25 allocations. No public comments were received on the FY 2014 DAS default allocations. The clarification of changes to the industry-funded call-in requirements make only minor, non-substantive changes in order to clarify the regulations. No public comments were received regarding the inclusion of LAGC IFQ open area trips as part of the industry-funded observer program. Delay in implementing the clarification to the industry-funded call-in requirements is contrary to the public interest because LAGC IFQ vessel operators are currently confused about whether or not they are required to call the industry-funded observer program when fishing in the NGOM. Implementing this clarification will alleviate unnecessary confusion.

Moreover, pursuant to 5 U.S.C. 553(d), the Assistant Administrator finds good cause to waive the 30-day delay in effective date for the reasons given above. These revisions make only minor, non-substantive changes and do not change operating practices in the fishery.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

This final rule is exempt from review under Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 15, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

Accordingly, 50 CFR part 648 is corrected by making the following correcting amendments:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.2, the definition for “open areas” is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Open areas, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Sea Scallop Access Areas specified in §§ 648.59 and 648.60, Rotational Closed Areas specified in § 648.58, EFH Closed Areas specified in § 648.61, or the Northern Gulf of Maine Management Area specified in § 648.62.

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3. In § 648.11, paragraph (g)(2)(ii) and the introductory text to paragraph (g)(5) are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

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(g) * * *

(2) * * *

(ii) LAGC IFQ vessels. LAGC IFQ vessel owners, operators, or managers must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday preceding the week (Sunday through Saturday) that they intend to start any open area or access area scallop trip and must include the port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge, scallop trawl vessel. If selected, up to two trips that start during the specified week (Sunday through Saturday) can be selected to be covered by an

observer. NMFS/NEFOP must be notified by the owner, operator, or vessel manager of any trip plan changes at least 48 hr prior to vessel departure.

* * * * *

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas or additional catch per open area or access area trip for LAGC IFQ trips in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

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3. In § 648.53, the introductory text to paragraph (b)(4) is revised to read as follows:

§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).

* * * * *

(b) * * *

(4) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(4) (full-time, part-time, or occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category, excluding carryover DAS in accordance with paragraph (d) of this section. DAS allocations shall be determined by distributing the portion of ACT specified in

paragraph (a)(3)(ii) of this section, as reduced by access area allocations specified in § 648.59, and dividing that amount among vessels in the form of DAS calculated by applying estimates of open area LPUE specified in paragraph (b)(1) of this section. Allocation for part-time and occasional scallop vessels shall be 40 percent and 8.33 percent of the full-time DAS allocations, respectively. The annual open area DAS allocations for each category of vessel for the fishing years indicated are as follows:

Scallop Open Area DAS Allocations

Permit category	2013	2014
Full-Time	33	23
Part-Time	13	9
Occasional	3	2

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